IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1421 OF 2003

M/s.Shri Engineering Services)
A Proprietary Concern, Through its)
Proprietor Shri Abhijit A. Nag,)
Age:43 years, Occ: Business,)
Reg.Office At A/30,)
Surajbhan Apartment,)
Ganeshkhind Road, Aundh,)
Pune-411 007.)...Appellant

Versus

Shri Baban Kondiba Kad,)
Age: Adult, Occ: Agriculturist,)
R/at.Kharabwadi, Taluka Khed,)
Opposite Kharabwadi Grampanchayat,)
District Pune.)...Respondent

Shri S.B.Deshmukh for the Appellant.

Shri S.A.Sawant for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : FEBRUARY 06, 2007.

JUDGMENT:

1. Notice for final disposal of the Appeal at admission stage was already issued. The submission of the advocates appearing for the parties are heard. The Appellant is the Plaintiff in a suit for specific performance of an agreement for sale of immovable property. By the impugned judgment and decree dated 04th January, 2003 the learned Trial Judge declined to

grant specific performance of the contract and dismissed the prayer made in that behalf. The learned Judge however directed the Respondent-Defendant to return the consideration amount of Rs.95,000/- alongwith interest.

2. The learned Advocate for the Appellant submitted that the Respondent had not filed a written statement. Therefore, the claim for specific performance ought to have been decreed. He pointed out the finding recorded by the learned Trial Judge that the Respondent did not want to perform his part of contract. He pointed out that all findings are in favour of the Appellant but without assigning any reasons, the learned Judge has declined to grant specific performance. He, therefore, submitted that the appeal be allowed and decree for specific performance be passed.

3. Shri Sawant appearing for the Respondent submitted that relief of specific performance is always discretionary and the Trial Court has rightly exercised discretion under section 20 of the Specific Relief Act, 1963. He submitted that in case this court is of the view that the suit is not properly

decided, order of remand be passed and an opportunity be given to the Respondent to file written statement. The learned Advocate for the Appellant by way of rejoinder submitted that at this stage no opportunity can be granted to the Appellant to file written statement. He submitted that suit deserves to be decreed as there is no contest on the claim for specific performance.

4. I have considered the submissions. In paragraph No.6 of the judgment, the learned Judge has held thus:

> "From the aforesaid documentary evidence, it is seen that, plaintiff was and is ready and willing to perform his part of contract. However, defendant did not want to perform his part of contract. The aforesaid oral as well as documentary evidence of the plaintiff has gone unchallenged and I have no hesitation to accept the same. More so because, I do no find any infirmity therein".

In paragraph No.7 he has proceed to hold as under:

> "(7) However, it is needless to mention here that, the relief of specific performance of contract is equitable discretionary relief. Looking to the transaction in respect of the agricultural land and other conditions of the agreement, in my opinion, it is more better in the interest of justice and doing equity to grant alternative relief of return of amount of Rs.95,000/- which has been paid by the plaintiff to the defendant towards the part payment alongwith interest thereon @ 18% p.a from the date of suit till realisation of amount because, it has come on record that, the plaintiff wants to expand his business by taking the agricultural land which was proposed to be for industrial zone".

It is true that under section 20 of the Specific Relief Act, 1963, the relief of specific performance is always a discretionary relief. However, for exercising the discretion, the court is expected to assign reasons. In the present case, the trial court has accepted the fact that the Appellant was ready and willing to perform his part of contract and that the

Appellant had proved the contract. I find that no reasons are assigned by the learned Trial Judge for exercising discretion under section 20 of the said Act of 1963 against the Appellant.

5. If detailed reasons could have been assigned by the learned Trial Judge, it would have been helpful for this court to decide the question of entitlement of decree for specific performance. The submission of the Advocate for the Respondent is that if this court is of the view that the suit is not properly decided, the suit may be remanded to the trial court with permission to the Respondent to file written statement. The said suggestion, in my view, is reasonable. However, the Respondent will have to pay costs as there is a delay in filing written statement. The amount of costs is quantified at Rs.10,000/-.

6. The suit deserves to be disposed of expeditiously considering the fact that the same is filed in June 1998.

7. Hence, I pass the following order:

(i) The impugned Judgment and Decree is quashed

and set aside and Special Civil Suit No.943 of 1998 is restored to file.

(ii) The parties are directed to appear before the learned Civil Judge, Senior Division at Pune on 26th March, 2007 at 11.00 a.m.

(iii) The Respondent is free to file written statement on 26th March, 2007. However, written statement be accepted provided the Respondent pays costs of Rs.10,000/- to the Appellant on or before the said date.

(iv) It is made clear that if written statement is not filed on 26th March, 2007, the Respondent will not be entitled to file the same.

(v) The learned Trial Judge will permit the Appellant to lead further evidence. It is obvious that even the Respondent will be entitled to lead further evidence provided he files written statement.

(vi) Ad-interim order dated 12th July, 2004 passed in Civil Application No.3863 of 2003 will

continue to operate till the final disposal of the suit.

(vii) The Trial Court is directed to decide the suit as expeditiously as possible and preferably on or before 31st December, 2007.

(viii) All contentions of the parties on merit are kept open.

(ix) Appeal is partly allowed in above terms.

(x) Writ be sent immediately. Record and Proceeding, if received by this Court, be forwarded alongwith writ.

JUDGE